

SECURITY AGREEMENT

THIS SECURITY AGREEMENT, dated as of June 28, 2018 (the "Security Agreement"), is made by the CITY OF FAYETTEVILLE, NORTH CAROLINA, a municipal corporation duly organized and existing under the Constitution and laws of the State of North Carolina (the "City"), for the benefit of BANK OF AMERICA, N.A., a national banking association organized and existing under the laws of the United States of America (the "Lender"), or any successors or assigns, being hereinafter referred to as the "Secured Party";

WITNESSETH:

WHEREAS, the City has entered into an Installment Financing Agreement, of even date herewith (the "Agreement"), with the Lender, whereby the Lender has agreed to advance funds to the City in the principal amount of \$4,898,812 to (a) pay the costs of the Equipment (as defined in the Agreement) and (b) pay certain related financing costs, and the City has agreed to repay the funds advanced to the City with interest in installments due at the times and in the amounts set forth in the Agreement (the "Installment Payments"), the final Installment Payment being due on June 28, 2022;

WHEREAS, the City desires to secure (a) the payment of the Installment Payments due under the Agreement, (b) the performance by the City of all of its other obligations under the Agreement, (c) the payment of any and all other indebtedness which this Security Agreement by its terms secures and (d) the performance by the City of the covenants and agreements contained in this Security Agreement by granting to the Secured Party a security interest in the Collateral (hereinafter defined);

NOW, THEREFORE, in order to induce the Lender to make the advancement under the Agreement, and in consideration of the benefits to accrue to the City by reason thereof, and for other good and valuable consideration, receipt of which is hereby mutually acknowledged, the parties hereby agree as follows:

Section 1. Uniform Commercial Code Security Agreement. The City hereby grants to the Secured Party, as security for the payment of all Installment Payments under the Agreement and the performance by the City of all of its other obligations under the Agreement and this Security Agreement, a security interest in (a) all of the Equipment financed by the City from the amounts advanced to the City pursuant to the Agreement, as more particularly described in Exhibit A hereto, including substitutions and replacements thereof or thereto as permitted by the Agreement, and all proceeds (cash and non-cash), including the proceeds of insurance and (b) the Equipment Fund (as defined in the Agreement), all sums contained therein, any investment of funds in the Equipment Fund and all products and proceeds thereof (collectively, the "Collateral"). The City shall execute, deliver and file, or cause to be filed, in such place or places as may be required by the Secured Party, Uniform Commercial Code financing statements (including any continuation statements or amendments thereto required to be filed to continue the perfection of the security interest granted hereby) in such form as is required to perfect and continue the perfection of the security interest hereby granted in the Collateral.

The City further agrees to provide the Lender with any additional information requested by the Secured Party necessary to identify the particular Equipment and to provide such identification markings on the Equipment, in form satisfactory to the Secured Party, as the Secured Party deems necessary or appropriate to give notice of the Secured Party's security interest in the Equipment, and upon assignment, the interest of any assignee of the Secured Party in the Equipment.

To the extent any Equipment is a motor vehicle required to be titled under North Carolina law, such vehicle is to be registered and titled in the name of the City. At closing, the Lender is not requiring the City to list the Lender as a lienholder on the title to any vehicle constituting a part of the Equipment. Notwithstanding the foregoing, upon the written request of the Secured Party at any time during the term of this Agreement, the City shall with reasonable dispatch endeavor to list the Secured Party as a lienholder on the title to such vehicles constituting a part of the Equipment and will cause the certificates of title for such vehicles to be delivered to the Security Party at such address specified by the Secured Party to the City for retention in the Secured Party's files throughout the term of the Agreement. The City shall be responsible for the correct titling of all vehicles constituting a part of the Equipment.

To the extent permitted by law, the Equipment is and shall at all times remain personal property, whether or not affixed to or installed upon real property, and none of the Equipment shall constitute fixtures within the meaning of the Uniform Commercial Code, as adopted by the State of North Carolina (the "UCC").

Section 2. Grant of Licenses; Collateral Assignment. The City is the owner of certain real property easements, rights of way and other interests and rights in real property where all or a portion of the Equipment may be located. To the fullest extent permitted by law, the City hereby grants to the Secured Party such licenses or other rights or privileges as may be necessary or desirable for the Secured Party, or its agents, to enter in or upon such property where the Equipment is located for the purpose of exercising its rights hereunder. The City grants these licenses in connection with the other property interests granted hereunder to the Secured Party, with the intent that such licenses qualify as licenses coupled with an interest so as to be irrevocable.

Section 3. Representations, Warranties and Covenants. The City hereby represents, warrants and covenants as follows:

(a) The City is and shall continue to be the absolute owner of the Collateral, free and clear of all encumbrances and security interests, other than Permitted Encumbrances (as defined in the Agreement).

(b) The City shall not sell, transfer, exchange, lease, mortgage, encumber, pledge or otherwise dispose of all or any part of the Collateral, except as provided in the Agreement and this Security Agreement.

(c) The City shall execute and deliver to the Secured Party concurrently with the execution and delivery of this Security Agreement and upon the request of the Secured Party

from time to time thereafter, all financing statements and other documents reasonably required to perfect and maintain the security interest created hereby.

Section 4. Events of Default and Remedies of Secured Party. (a) If any of the following events shall occur:

(i) default in any payment under the Agreement or default in any of the other terms or conditions of the Agreement secured hereby and the expiration of any applicable grace or notice periods provided thereby; or

(ii) failure by the City to observe and perform any warranty, covenant, condition or agreement on the part of the City under this Security Agreement for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the City by the Secured Party unless the Secured Party shall agree in writing to an extension of such time prior to its expiration; provided, however, that if the failure stated in the notice cannot be corrected within the applicable period and if corrective action is instituted by the City within the applicable period and diligently pursued, the City shall have such additional period of time to correct the failure as shall be necessary to correct such failure so long as such correction is diligently pursued; or

(iii) any lien, charge or encumbrance prior to or affecting the validity of this Security Agreement is found to exist, other than Permitted Encumbrances, or proceedings are instituted to enforce any lien, charge or encumbrance against the Collateral and such lien, charge or encumbrance would be prior to the lien of this Security Agreement;

then and in any of such events (hereinafter referred to as an “Event of Default”), all payments under the Agreement may become at once due and payable, regardless of the maturity date or other due date thereof.

(b) Upon the occurrence of an Event of Default, the Secured Party may proceed against the Collateral as provided in and in accordance with the applicable provisions of the UCC. Subject to any limitations imposed by the applicable provisions of the UCC, the Secured Party may sell, lease, or otherwise dispose of all or any part of the Collateral, at public or private sale, for cash or on credit, as a whole or in part, and the Secured Party may at such sale or sales purchase the Collateral or any part thereof. The proceeds of such sale, lease, collection or other disposition shall be applied first to the costs and expenses of the Secured Party incurred in connection with such sale, lease, collection or other disposition, and then to such outstanding balance due on any and all indebtedness owed to the Secured Party in the manner provided in the Agreement. Further, the Secured Party may require the City to assemble the Collateral and make the Collateral reasonably available to the Secured Party at one or more places to be designated by the Secured Party which are reasonably convenient to the City and the Secured Party, and the Secured Party may take possession of the Collateral and hold, prepare for sale, lease or otherwise dispose of the Collateral. Any required notice by the Secured Party of the sale or other disposition or default, when mailed to the City at its address set forth herein, shall constitute reasonable notice to the City. In addition to, but not in limitation of, any of the foregoing, the Secured Party may exercise any or all of the rights and remedies afforded to the Secured Party by the provisions of the UCC or otherwise afforded to the Secured Party under this Security

Agreement, with all such rights and remedies being cumulative and not alternative, and the City agrees, to the extent permitted by law, to pay the reasonable fees, expenses and other costs of collection, including the fees, expenses and costs provided by statute. No failure or delay in exercising any option, right or remedy shall be deemed a waiver thereon or a waiver of any Event of Default.

NOTWITHSTANDING ANY OTHER PROVISIONS HEREIN, IT IS THE INTENT OF THE PARTIES HERETO TO COMPLY WITH SECTION 160A-20 OF THE GENERAL STATUTES OF NORTH CAROLINA, AS AMENDED. NO DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST THE CITY IN FAVOR OF THE SECURED PARTY OR ANY OTHER PERSON IN VIOLATION OF SAID SECTION 160A-20, INCLUDING, WITHOUT LIMITATION, ANY DEFICIENCY JUDGMENT FOR AMOUNTS THAT MAY BE OWED HEREUNDER OR UNDER THE AGREEMENT WHEN THE SALE OF ALL OR ANY PORTION OF THE COLLATERAL IS INSUFFICIENT TO PRODUCE ENOUGH MONEYS TO PAY IN FULL ALL REMAINING OBLIGATIONS HEREUNDER OR UNDER THE AGREEMENT.

Section 5. Miscellaneous.

(a) Notices. All notices and other communications hereunder shall be in writing and, unless otherwise provided herein, shall be deemed to have been given when delivered or mailed by first-class, registered or certified mail, postage prepaid, addressed as follows:

If to the City:

City of Fayetteville, North Carolina
433 Hay Street
P.O. Drawer D
Fayetteville, NC 28301
Attention: Chief Financial Officer

If to the Lender:

Bank of America, N.A.
**[555 California Street, 4th Floor
San Francisco, California 94104
Attention: Contract Administration]**

The City and the Lender may, by notice given hereunder, designate any further or different addresses to which subsequent notices or other communications shall be sent or persons to whose attention the same shall be directed.

(b) Successors and Assigns. This Security Agreement shall bind the City and its successors and assigns and shall inure to the benefit of and be enforceable by the Secured Party and its successors and assigns.

(c) Applicable Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina.

(d) Severability. In the event any term, provision or covenant herein contained or the application thereof to any circumstances or situation shall be invalid or unenforceable in whole or in part, the remainder hereof and the application of said term or provision or covenant to any other circumstances or situation shall not be affected thereby, and every other term, provision or covenant herein shall be valid and enforceable to the full extent permitted by law.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the City has caused this Security Agreement to be executed, sealed and attested in its name by its duly authorized officers, all as of the day and year first above written.

CITY OF FAYETTEVILLE, NORTH CAROLINA

[SEAL]

By: _____
City Manager

Attest:

City Clerk

DESCRIPTION OF THE EQUIPMENT

The Equipment consists of all equipment acquired by the City in whole or in part from the proceeds of the amounts advanced to the City pursuant to the Agreement, including, without limitation, the following (but only to the extent proceeds of the amounts advanced to the City pursuant to the Agreement are used in whole or in part to pay the purchase price of such Equipment):

[Description of Equipment to be inserted]

<u>No.</u>	<u>Description</u>
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